

Introduced by Senator Speier

February 16, 2005

An act to amend Section 138.7 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 292, as introduced, Speier. Workers' compensation: personally identifiable information: journalists.

Existing law prohibits a person or public or private entity who is not a party to a claim for workers' compensation benefits from obtaining individually identifiable information, as defined, that is obtained or maintained by the Division of Workers' Compensation on that claim, except that, among other things, residence addresses may be disclosed to any person for a journalistic purpose.

This bill, instead, would make this exception applicable to a person acting in a capacity as a journalist and employed by a newspaper of general circulation or by a reporter for any journalistic purpose of a radio or television station licensed under the laws of the United States. It would prohibit these persons from divulging the address except to another journalist or reporter working for the newspaper or radio or television station, and would require these persons to otherwise seek to prevent a violation of the privacy of the claimant caused by the use of the claimant's address for purposes of commercial solicitation for services related to the claim.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 138.7 of the Labor Code is amended to read:

138.7. (a) Except as expressly permitted in subdivision (b), a person or public or private entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information obtained or maintained by the division on that claim. For purposes of this section, "individually identifiable information" means any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity.

(b) (1) The administrative director, or a statistical agent designated by the administrative director, may use individually identifiable information for purposes of creating and maintaining the workers' compensation information system as specified in Section 138.6.

(2) The State Department of Health Services may use individually identifiable information for purposes of establishing and maintaining a program on occupational health and occupational disease prevention as specified in Section 105175 of the Health and Safety Code.

(3) (A) Individually identifiable information may be used by the Division of Workers' Compensation, the Division of Occupational Safety and Health, and the Division of Labor Statistics and Research as necessary to carry out their duties. The administrative director shall adopt regulations governing the access to the information described in this subdivision by these divisions. Any regulations adopted pursuant to this subdivision shall set forth the specific uses for which this information may be obtained.

(B) Individually identifiable information maintained in the workers' compensation information system and the Division of Workers' Compensation may be used by researchers employed by or under contract to the Commission on Health and Safety and Workers' Compensation as necessary to carry out the commission's research. The administrative director shall adopt regulations governing the access to the information described in this subdivision by commission researchers. These regulations shall set forth the specific uses for which this information may be

obtained and include provisions guaranteeing the confidentiality of individually identifiable information. Individually identifiable information obtained under this subdivision shall not be disclosed to commission members. No individually identifiable information obtained by researchers under contract to the commission pursuant to this subparagraph may be disclosed to any other person or entity, public or private, for a use other than that research project for which the information was obtained. Within a reasonable period of time after the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(4) The administrative director shall adopt regulations allowing reasonable access to individually identifiable information by other persons or public or private entities for the purpose of bona fide statistical research. This research shall not divulge individually identifiable information concerning a particular employee, employer, claims administrator, or any other person or entity. The regulations adopted pursuant to this paragraph shall include provisions guaranteeing the confidentiality of individually identifiable information. Within a reasonable period of time after the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) This section shall not operate to exempt from disclosure any information that is considered to be a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) contained in an individual's file once an application for adjudication has been filed pursuant to Section 5501.5.

However, individually identifiable information shall not be provided to any person or public or private entity who is not a party to the claim unless that person identifies himself or herself or that public or private entity identifies itself and states the reason for making the request. The administrative director may require the person or public or private entity making the request to produce information to verify that the name and address of the requester is valid and correct. If the purpose of the request is

1 related to preemployment screening, the administrative director
2 shall notify the person about whom the information is requested
3 that the information was provided and shall include the following
4 in 12-point type:

5 “IT MAY BE A VIOLATION OF FEDERAL AND STATE
6 LAW TO DISCRIMINATE AGAINST A JOB APPLICANT
7 BECAUSE THE APPLICANT HAS FILED A CLAIM FOR
8 WORKERS’ COMPENSATION BENEFITS.”

9 Any residence address, *including street address, apartment*
10 *number, city, and Zip Code*, is confidential and shall not be
11 disclosed to any person or public or private entity except to a
12 party to the claim, a law enforcement agency, an office of a
13 district attorney, ~~any person for a journalistic purpose, or other~~
14 ~~governmental agency, or a person acting in a capacity as a~~
15 ~~journalist and employed by a newspaper of general circulation,~~
16 ~~as defined in Section 6000 of the Government Code, or by a~~
17 ~~reporter for any journalistic purpose of a radio or television~~
18 ~~station licensed under the laws of the United States. The person~~
19 ~~acting in a capacity as a journalist and employed by a newspaper~~
20 ~~of general circulation as well as a person acting as a reporter~~
21 ~~employed by a radio or television station shall not divulge the~~
22 ~~address except to another journalist or reporter working for the~~
23 ~~newspaper or radio or television station, and shall otherwise~~
24 ~~seek to prevent a violation of the privacy of the claimant caused~~
25 ~~by the use of the claimant’s address for purposes of commercial~~
26 ~~solicitation for services related to the claim.~~

27 Nothing in this paragraph shall be construed to prohibit the use
28 of individually identifiable information for purposes of
29 identifying bona fide lien claimants.

30 (c) Except as provided in subdivision (b), individually
31 identifiable information obtained by the division is privileged
32 and is not subject to subpoena in a civil proceeding unless, after
33 reasonable notice to the division and a hearing, a court
34 determines that the public interest and the intent of this section
35 will not be jeopardized by disclosure of the information. This
36 section shall not operate to restrict access to information by any
37 law enforcement agency or district attorney’s office or to limit
38 admissibility of that information in a criminal proceeding.

39 (d) It shall be unlawful for any person who has received
40 individually identifiable information from the division pursuant

- 1 to this section to provide that information to any person who is
- 2 not entitled to it under this section.

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